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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

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)	
MERRILEE DIRICKSON,)	Case No. MC 21-0459-FMO (JPRx)
)	
Plaintiff,)	
)	
v.)	ORDER ACCEPTING FINDINGS AND
)	RECOMMENDATIONS OF U.S.
INTUITIVE SURGICAL, INC.,)	MAGISTRATE JUDGE
)	
Defendant.)	
)	
)	
)	

Pursuant to 28 U.S.C. § 636, the Court has reviewed the parties' briefings, the records on file, and the Report and Recommendation of U.S. Magistrate Judge. On September 21, 2021, Respondent Adam Clark filed objections to the R. & R., and on October 5 Plaintiff replied. On October 12, Plaintiff moved for leave to submit "additional authority" in response to Clark's objections. The Court noted that no such leave was likely needed because the "authority" Plaintiff wanted to bring to the Court's attention was simply an order in the underlying litigation, in the Northern District of Illinois, of which the Court could take judicial notice, but it nonetheless gave Clark the opportunity to

1 respond to Plaintiff's motion. On October 19, he filed a notice
2 of nonopposition, in which, based on the new Illinois order, he
3 withdrew his argument concerning the Illinois Magistrate Judge's
4 remark that Plaintiff's requested relief was "dubious."¹

5 Clark raises four overarching objections to the R. & R.,
6 including the now-withdrawn one based on the "dubious" remark.
7 His three remaining objections mostly rehash arguments in his
8 opposition to the motion to compel and in his own motions,
9 arguments the Magistrate Judge thoroughly addressed in her R. &
10 R. He does not challenge at all her rejection of his motions,
11 for sanctions and to strike argument from Plaintiff's reply
12 brief, and therefore the Court accepts the R. & R.'s findings and
13 recommendations concerning them.

14 As for the underlying motion to compel discovery, as Clark
15 concedes, this Court should refuse to accept the R. & R. only if
16 the Magistrate Judge's ruling was "clearly erroneous or contrary
17 to law." (Objs. at 12);² see also Fed. R. Civ. P. 72(a). He
18 argues that the Magistrate Judge "did not properly weigh the
19 factors that supported non-disclosure." (Objs. at 5.) This
20 argument is untenable. As an initial matter, as he now
21 acknowledges (see, e.g., id. at 11, 13 & n.3), the test he urged
22 the Magistrate Judge to apply was outdated and had been broadly
23

24 ¹ In that new order, the Illinois Magistrate Judge stated that
25 "no one should place any weight" on the "off-the-cuff" "dubious"
26 comment. (Mot. for Leave, Ex. 1 at 2 n.1.) Further, he stated
27 that he had read the R. & R. and found it "sound and well-
28 reasoned." (Id.)

28 ² The Court uses the pagination generated by its Case
Management/Electronic Case Filing system.

1 modified by the California Supreme Court in ways that did not
2 favor him. (See R. & R. at 5, 17 (citing Williams v. Super. Ct.,
3 3 Cal. 5th 531 (2017)).)³ Moreover, he never directly cited or
4 discussed in his earlier briefing the case whose factors he now
5 says she should have used, Hill v. Nat'l Collegiate Athletic
6 Ass'n, 7 Cal. 4th 1, 35-37 (1994). (Objs. at 13-14; see Opp'n at
7 ii-iv (table of authorities).)

8 In any event, the Magistrate Judge carefully balanced the
9 relevant factors, laying out the applicable law (see R. & R. at
10 4-6) and recognizing that Clark did have a privacy interest in
11 his personnel information (see id. at 7; Hr'g Tr. at 4, 19 ("I
12 certainly agree with you that there is a privacy interest."), 34-
13 35) but finding that his concerns about its disclosure were
14 mitigated by the protective order (see R. & R. at 5, 10-11; Hr'g
15 Tr. at 11, 19-20) and outweighed by Plaintiff's need for the
16 information (see R. & R. at 10-11) and his status as a third
17 party in name only (see id. at 8, 17; Hr'g Tr. at 11 (noting that
18 Clark was "one iota removed from being a party in this
19 matter"))).⁴ See Williams, 3 Cal. 5th at 554. Her careful
20 balancing is reflected in her limiting of the questions Plaintiff
21

22
23 ³ Somewhat incredibly, despite Williams and all the cases that
24 have followed explaining that in circumstances such as those here
25 a party seeking discovery over privacy objections no longer needs
26 to show a "compelling interest" to get the material (see R. & R. at
27 4-6), Clark argues that "the finding that one's personnel history
is a significant privacy interest deserving of the highest level of
protection remains intact" – and then cites a pre-Williams case for
that proposition. (Objs. at 13.)

28 ⁴ Clark's objections do not challenge the Magistrate Judge's
finding that he was not a typical uninterested third party.

1 may ask. The Magistrate Judge did not clearly err or act
2 contrary to law.⁵

3 Next, Clark complains that the Magistrate Judge erroneously
4 "relied on evidence about how the complaining employees felt, and
5 ignores the undisputed evidence about their actual complaints."
6 (Objs. at 16 (cleaned up).) But as the Magistrate Judge
7 repeatedly pointed out, their testimony on this score was
8 ambiguous. (R. & R. at 8-9.) Moreover, given how the women
9 "felt," it's reasonable to assume that they would have
10 communicated those feelings to Clark even if they sometimes
11 testified that they couldn't remember what they had said to him.
12 Thus, the Magistrate Judge did not clearly err or act contrary to
13 law in concluding that the complaining witnesses' testimony was
14 "open to interpretation" and could support Plaintiff's theory of
15 the case, warranting discovery relevant to it.

16 Finally, Clark asks that if he is made to answer the four
17 questions and any followup that the Magistrate Judge recommended
18 be allowed, the questions be limited to the period through when,
19 but not after, he was interviewed by Human Resources in late 2018
20 concerning Plaintiff's complaints and Ebong, not to the period up
21 until Plaintiff was terminated, in January 2019. But the
22

23 ⁵ As Plaintiff points out (Pl.'s Resp. at 5), California
24 federal courts regularly order personnel information produced in
25 discovery over privacy objections without explicitly citing or
26 analyzing Hill. Indeed, as the Magistrate Judge noted, a
27 California federal court recently compelled discovery almost
28 identical to that sought here from an employee third party
similarly situated to Clark, over the same sort of privacy
objections. (See R. & R. at 6 (citing Westmoreland v. Regents of
the Univ. of Cal., No. 2:17-cv-01922-TLC-AC, 2019 WL 932220, at *7
(E.D. Cal. Feb. 26, 2019)).)

